

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

In re:) Chapter 11
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.)

**TRUSTEE'S MOTION TO APPROVE
SETTLEMENT WITH FLORIDA CREDITORS**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as Chapter 11 Trustee ("Trustee") for Eastern Livestock Co., LLC ("Debtor" or "Eastern"), respectfully moves the Court for approval of the compromise and settlement of claims by and between: (i) the Trustee; (ii) Hilliard–McKettrick Investments, Inc. d/b/a Arcadia Stockyard; Cattlemen’s Livestock Market, Inc.; Columbia Livestock Market, Inc.; Hardee Livestock Market, Inc.; North Florida Livestock Market, Inc.; Ocala Livestock Market, Inc.; Okeechobee Livestock Market, Inc.; Sumter County Farmers Market, Inc.; and Madison County Livestock Market, Inc. d/b/a Townsend Livestock Market; Ron Sizemore Trucking, Inc. Oak Lake Cattle Co.; Eagle Bay, Inc.; Daniel M. Byrd; and I.E. "Jim" Byrd, (collectively "Florida Creditors"); and (iii) Fifth Third Bank ("Fifth Third"), (collectively, the "Parties"). This motion seeks approval of a compromise to resolve claims and objections involving the Florida Creditors that have been asserted or that could have been asserted in the *Rush Creek Interpleader* and in the main chapter 11 case. In support of this settlement motion, the Trustee states as follows:

Introduction and Background

1. The Florida Creditors alleged that during late October and early November 2010 the Florida Creditors engaged in certain cattle transactions for which they were not paid, either receiving no payment at all or receiving payment from Eastern by checks that were

allegedly wrongfully dishonored upon presentment. The Florida Creditors claimed certain funds that were interpleaded in the action now known as *Rush Creek Ranch LLP v. Eastern Livestock Co., LLC*, Adv. Pro. No. 11-59104. The Florida Creditors also raised objections to the Trustee's May 23, 2011 purchase money claims report and presented proofs of claims against the Debtor's estate.

2. The recitals in the attached Settlement Agreement and Mutual Release (Exhibit 1) set forth on pages two through 5 the procedural history of the various claims, objections, and proceedings involving the Florida Creditors in these proceedings. Those recitals are incorporated here by reference.

3. The Trustee negotiated a resolution of these disputes with attorney W. Scott Newbern on behalf of the Florida Creditors. Because the Florida Creditors' claims concern funds Fifth Third claims as its collateral and because the Florida Creditors wish to resolve all potential disputes related to this case, Fifth Third also participated in the negotiation of the settlement and release terms.

4. To avoid the significant cost, expense, and delays inherent in litigating the disputes and claims described above, the Trustee is authorized to report to the Court that the Parties to the Settlement Agreement and Mutual Release now desire to settle the disputes with the Florida Creditors upon the terms and conditions set forth in Exhibit 1. Exhibit 1 has been approved by counsel and the Parties and is now circulating for final signatures.

The Settlement

5. The Trustee respectfully requests the Court to approve the Settlement Agreement and Mutual Release, the most significant provisions of which are as follows:

(a) The Florida Creditors shall receive and/or retain \$277,702.82 and the Trustee shall receive and/or retain \$100,098.51. These sums shall be paid in part from funds now interpleaded in connection with the Rush Creek Adversary Proceeding and in part from amounts Len Miller previously withheld and later paid to the Trustee as escrowed purchase money.

(b) The settlement is contingent upon the Court's entry of a final order approving the Settlement Agreement and Mutual Release.

(c) The Florida Creditors will release Eastern, the Trustee, and Fifth Third. Fifth Third and the Trustee will release the Florida Creditors as well as Tommy Berend, D.R. Daniels, Tom Herrmann, and Jacob Larson.

(d) The settlement will conclude the Florida Creditors' involvement in this chapter 11 case, including dismissal of their proofs of claims, any and all of their cross-claims and counterclaims in the *Rush Creek Adversary Proceeding* and any other claims they may have against the estate, the Trustee, or Fifth Third.

6. Pursuant to Federal Rule of Bankruptcy Procedure 9019, this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

7. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *See In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007); *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994); *Matter of Energy Co-op, Inc.*, 886 F.2d 921, 927 (7th Cir. 1989).

8. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement and Mutual Release is fair and equitable and in the best interests of the estate. The Settlement Agreement is the result of arms-length settlement negotiations following careful research, investigation, and evaluation. The alternative to the settlement is litigation of complex and fact-intensive claims between the Parties, and the possibility of an outcome that would result in a smaller recovery to the estate.

9. The Trustee therefore believes that the proposed settlement is fair and equitable and in the sound exercise of his business judgment.

WHEREFORE, if no objections to this Settlement Motion are filed, the Trustee respectfully requests that the Court enter a prompt order approving the settlement as well as other orders necessary to complete promptly the *Rush Creek Adversary Proceeding*, transfer and distribution of interpleaded funds consistent with the terms of the Settlement Agreement and Mutual Release, and approval of stipulations of dismissal of other claims by and against the Florida Creditors. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely-filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2012, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on May 17, 2012, a copy of the foregoing pleading was served via electronic mail transmission on the following:

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